

1  
2         FILED       ENTERED  
2         LODGED       RECEIVED  
3

3 SEP 18 2007 LK  
4

5  
6  
7 AT SEATTLE  
4 CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY  
8

9  
10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT SEATTLE

13 HENRY BARABIN and GERALDINE  
14 BARABIN,

No. C 07-1454 RSL

15 Plaintiffs,

16 v.  
17 ALBANY INTERNATIONAL CORP.;  
18 et al.,

19 Defendants.

20 NOTICE OF REMOVAL OF ACTION  
21 UNDER 28 USC §§ 1332, 1441 and  
22 1446

23 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN  
24 DISTRICT OF WASHINGTON:

25 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. sections 1332, 1441 and 1446,  
Defendants ASTENJOINSON, INC. ("Asten") and SCAPA DRYER FABRICS, INC.  
("Scapa") hereby remove to this Court the state court action described below. The grounds  
for removal are as follows:

1. The state court action, hereby removed, is a civil action over which this Court  
has jurisdiction under 28 U.S.C. section 1332(a), as the matter in controversy exceeds the sum  
or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.



31 07-CV-01454-CMP

32 NOTICE OF REMOVAL - 1

K:\2038878\00554\20950\_MRL\20950P20HF

33 KIRKPATRICK & LOCKHART  
34 PRESTON GATES ELLIS LLP  
35 925 FOURTH AVENUE  
36 SUITE 2900  
37 SEATTLE, WASHINGTON 98104-1158  
38 TELEPHONE: (206) 623-7580  
39 FACSIMILE: (206) 623-7022

1           2. On or about December 18, 2006, this civil action was filed in the Superior  
 2 Court for the State of Washington in and for the County of King, entitled Henry Barabin and  
 3 Geraldine Barabin v. Albany International Corporation, et al., Cause No. 06-2-39452-6 SEA.

4           3. The Complaint alleges that Henry Barabin was injured as a result of his work  
 5 with and around asbestos and various asbestos-containing products. Plaintiffs' Complaint  
 6 claims that Asten is liable for plaintiffs' alleged asbestos-related injuries on theories of  
 7 negligence; strict liability; civil conspiracy; fraud and deceit/negligent misrepresentation; and  
 8 loss of consortium. The apparent basis of these claims against Asten, taken in conjunction  
 9 with the evidence set forth in Plaintiffs' Answers to the Style Interrogatories, is Asten's  
 10 manufacture and supply of dryer felts to a facility where Mr. Barabin worked.

11          4. Plaintiffs' original complaint filed with the Superior Court on December 18,  
 12 2006 named the Bartells Settlement Trust ("Bartells"), a Washington company, as a  
 13 Defendant. A true and accurate copy of the complaint is attached as Exhibit A. The  
 14 plaintiff's First Amended Complaint signed on March 1, 2007 added Scapa as a defendant,  
 15 while keeping Bartells as a Defendant. Exhibit B.

16          5. On September 6, 2007, Plaintiffs' counsel initially informed the court via email  
 17 that Crane Co., Scapa Dryer Fabrics, Inc., Foster Wheeler, and AstenJohnson, Inc. remained  
 18 as defendants. A true and correct copy of Plaintiffs' email, with the attached word document,  
 19 is attached hereto as Exhibit C.

20          6. On September 10, 2007, in response to an email inquiry from Judge Lau's  
 21 bailiff asking for a list of defense counsel in the Barabin case, Plaintiff's counsel responded  
 22 indicating that there were three defendants in the Barabin case, Crane Co., Scapa, and Asten  
 23 Group. A true and accurate copy of that email is attached as Exhibit D.

24          7. On September 13, 2007, Plaintiffs' counsel informed the Court during a status  
 25 conference that it had entered into an administrative agreement with Bartells.

1       8.     The basis for removal is that, after the Bartells settlement, this action enjoys  
 2 complete diversity. Pursuant to 28 U.S.C. section 1441(b), an "action shall be removable only  
 3 if none of the parties in interest properly joined and served as defendants is a citizen of the  
 4 State in which such action is brought." Here, Plaintiffs are residents of Arizona, Defendant  
 5 Crane Co. is a resident of Connecticut, Defendant Scapa is a Delaware Corporation with its  
 6 principal place of business in Connecticut, and Defendant Asten is a Delaware corporation  
 7 with South Carolina as its principal place of business.

8       9.     28 U.S.C. section 1446(b) provides that a case becomes removable when the  
 9 Defendant receives "a copy of an amended pleading, motion, order or other paper from which  
 10 it may first be ascertained that the case is one which is or has become removable."

11      10.    Plaintiffs' email to the court disclosing that Bartells was no longer a defendant  
 12 was received on September 10, 2007. The existence of an administrative agreement with  
 13 Bartells was confirmed during the Court's status hearing on September 14, 2007. Thus, on  
 14 September 10, 2007, Asten received its first notice, within the meaning of 28 U.S.C. section  
 15 1446(b), of facts indicating the grounds for removability of this case. Harris v. Bankers Life  
and Cas. Co., 425 F.3d 689, 695-96 (9<sup>th</sup> Cir. 2005) (finding that removal was timely when it  
 16 was filed after the remaining defendant received a letter from plaintiff's counsel suggesting  
 17 that he was not proceeding against a resident defendant who had not been served or  
 18 dismissed); Hessler v. Armstrong World Industries, Inc., 684 F. Supp. 393, 394-95 (D. Del.  
 19 1988) (finding that removal was untimely when the defendant learned, through  
 20 correspondence and statements to the Court, that nondiverse defendants had settled). Because  
 21 these removal papers have been filed within 30 days of receiving notice of Plaintiffs'  
 22 settlement, this removal is timely.

24      11.    The required jurisdictional amount of \$75,000 is met in this case. 28 U.S.C.  
 25 section 1332. By way of example, attached as Exhibit E are Plaintiffs' Answers to the First

1 Style Interrogatories, where Plaintiffs claim medical expenses of \$200,000, future medical  
 2 expenses of \$200,000, \$1,000,000 in lost earning capacity, and \$500,000 in loss of household  
 3 services. See Bell v. Preferred Life Assurance Society, 320 U.S. 238, 240, 64 S.Ct. 5, 88  
 4 L.Ed. 15 (1943) (9<sup>th</sup> Cir. 2002) (stating that a court may consider evidence of actual  
 5 damages).

6       12. Notably, Plaintiffs have requested \$1,000,000 to settle their claims with Asten.  
 7 A true and accurate copy of a letter from Plaintiffs' counsel reflecting a \$1,000,000 settlement  
 8 demand is attached as Exhibit F. Plaintiff has also obtained settlements from other former  
 9 defendants, and the cumulative total of those settlements have exceeded the jurisdictional  
 10 amount. A true and accurate copy of a letter from Plaintiffs' counsel reflecting settlement  
 11 amounts with three defendants is attached as Exhibit G. Cohn v. Petsmart, Inc., 281 F.3d  
 12 837, 840 (9th Cir. 2002) (finding that a settlement letter is relevant evidence of the amount in  
 13 controversy).

14       13. Asten and Scapa have notified and obtained the consent of the other defendant  
 15 in this action in order to remove Plaintiffs' action as a whole under 28 U.S.C. section 1446.  
 16 That consent will be filed separately.

17       14. A properly removed case cannot be remanded for discretionary or policy  
 18 reasons, such as a contention that judicial economy compels remand. 28 U.S.C. section  
 19 1447(c); Elrad v. United Life & Accident Insurance Company, 624 F. Supp. 742, 743 (N.D.  
 20 Ill. 1985).

21       15. Asten and Scapa will notify the clerk of the Judicial Panel on Multidistrict  
 22 Litigation ("Panel") of the existence of this "tag-along" asbestos case and request that the case  
 23 be transferred to the United States District Court for the Eastern District of Pennsylvania (In  
 24 Re Asbestos Products Liability Litigation, MDL Docket No. 875), pursuant to the Panel's  
 25 order transferring asbestos cases to that district for centralized pretrial proceedings.

16. Pursuant to 28 U.S.C. §1446(a) and CR 101(b), a copy of all pleadings, process and orders served on or by the parties in the state action will be forwarded to the court within ten days.

17. Written notice of the filing of this Notice of Removal will be given to Plaintiffs and the other defendants in this action, together with a copy of the Notice of Filing Notice of Removal and supporting papers with the Superior Court of Washington, County of King, as required by 28 U.S.C. §1446(d).

WHEREFORE, ASTEN and SCAPA respectfully request that this action be removed to this Court.

DATED this 18th day of September, 2007.

KIRKPATRICK & LOCKHART  
PRESTON GATES ELLIS LLP

~~66208-8~~

By \_\_\_\_\_ / s / G. William Shaw  
G. William Shaw, WSBA # 8573  
Kevin A. Rosenfield, WSBA # 34972  
Martha Rodriguez-Lopez, WSBA # 35466  
Attorneys for Defendant  
AstenJohnson, Inc.

WILLIAMS, KASTNER & GIBBS, PLLC

By /s/ Christopher S. Marks  
Christopher S. Marks, WSBA # 28634  
Attorneys for Defendant  
Scapa Dryer Fabrics, Inc.

**NOTICE OF REMOVAL - 5**

KIRKPATRICK & LOCKHART  
PRESTON GALT'S ELLIS LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022